

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Indonesia is the world's largest archipelagic state in the world,<sup>1</sup> ranked as the sixth nation to have the largest Exclusive Economic Zone (EEZ)<sup>2</sup> with roughly 3 million square kilometers of EEZ and the territorial waters being roughly as big as 290 thousand square kilometers,<sup>3</sup> with over 70% of Indonesian territory covered in waters, Indonesia contributes a total of 21% of the total water resources in the Asia Pacific region.<sup>4</sup> Indonesian waters also housed over 3 thousand bony fish species and over 850 species of sharks, rays, chimeras,<sup>5</sup> and housing a total of 574 coral species out of 605 different coral species in the world.<sup>6</sup> President Joko Widodo has also claimed that Indonesia has the potential to become the maritime global axis, a

---

<sup>1</sup> Robert Cribb. *Indonesia beyond the Waters Edge: Managing an Archipelagic State*, (Institute of Southeast Asian Studies, 2009).

<sup>2</sup> Nazar Nurdin. "Hanya Ada 13.466 Pulau Di Indonesia", <<https://nationalgeographic.grid.id/read/13281675/hanya-ada-13466-pulau-di-indonesia>>, accessed 10 December 2021; Geoffrey Migiro. "Countries With The Largest Exclusive Economic Zones." <<https://www.worldatlas.com/articles/countries-with-the-largest-exclusive-economic-zones.html>>, accessed 10 December 2021.

<sup>3</sup> M Ambari. "Pemerintah Keluarkan Data Resmi Wilayah Kelautan Indonesia, Apa Saja Yang Terbaru," <<https://www.mongabay.co.id/2018/08/27/pemerintah-keluarkan-data-resmi-wilayah-kelautan-indonesia-apa-saja-yang-terbaru/>>, accessed 10 December 2021.

<sup>4</sup> "State of Water Environmental Issues Indonesia." <<http://www.wepa-db.net/policies/state/indonesia/indonesia.htm>>, accessed 10 December 2021.

<sup>5</sup> "Indonesia Is the Largest Archipelagic Country in the World and the World's Second-Largest Producer of Seafood." <<https://www.nature.org/en-us/about-us/where-we-work/asia-pacific/indonesia/stories-in-indonesia/indonesia-fisheries/>>, accessed 10 December 2021.

<sup>6</sup> Sari Ni Wayan Purnama. "Metode Baru Sebagai Usaha Untuk Merehabilitasi Terumbu Karang Di Indonesia Secara Cepat", *Majalah Ilmiah Oseana* Vol XL, Number 1 2015, p. 27.

potential in which he pursues.<sup>7</sup> Inherently, such a large body of water entails a great potential for Indonesia to grow economically, environmentally, biologically, and socially.<sup>8</sup>

Due to the great amount of natural resources, Indonesian waters attract illegal fishermen to exploit it, halting the opportunity for Indonesia to grow due to the constant practice of Illegal, Unreported, and Unregulated Fishing (“IUUF”). Although the origin of IUUF practices in Indonesia is uncertain, the practice has been done even before the 1990s, yet IUUF practice starts to seriously threaten maritime securities within Southeast Asia, including that of Indonesia’s, since the 1990s.<sup>9</sup> As of February 2021, Indonesia’s vulnerability rate towards IUUF is ranked 6th in the world.<sup>10</sup> Total economic loss caused by IUUF accrued since 1970 would equate to more than roughly 2,500 trillion IDR,<sup>11</sup> with yearly economic loss estimated by the Food and Agriculture Organization (FAO) to be 30 trillion IDR, however, former Minister of Marine and Fisheries, Susi Pudjiastuti, has a different estimation of yearly

---

<sup>7</sup> Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation. “Indonesia Has Enormous Potential to Become Global Maritime Axis, President Jokowi Says”, <<https://setkab.go.id/en/indonesia-has-enormous-potential-to-become-global-maritime-axis-president-jokowi-says/>>, accessed 10 December 2021.

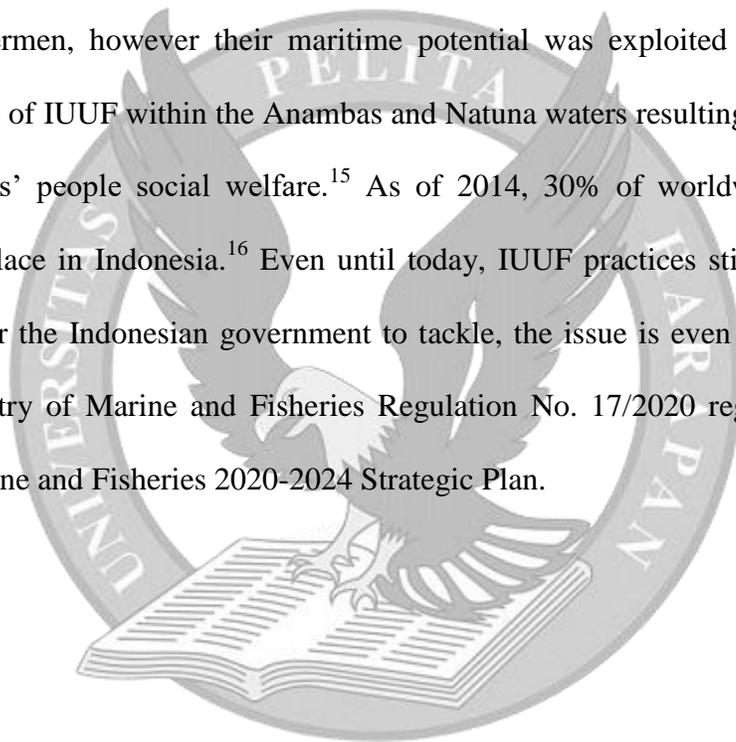
<sup>8</sup> Safrezi Fitra. “Jokowi: Indonesia Rugi Rp 260 Triliun Akibat Pencurian Ikan”, <<https://katadata.co.id/safreziFitra/berita/5e9a56c17c3d4/jokowi-indonesia-rugi-rp-260-triliun-akibat-pencurian-ikan>>, accessed 10 December 2021.

<sup>9</sup> Ema Septaria. “IUU Fishing in Indonesia, are ASEAN Member States Responsible for?”, *International Journal of Business, Economics and Law* 11, Number. 4 December 2016, p. 76–82.

<sup>10</sup> Ranking can be seen through the IUUFishing index website: <https://iuufishingindex.net/ranking>.

<sup>11</sup> Rise Andari Harti Saswidi. “The Law Enforcement on Illegal Fishing in Indonesian Sea Under Indonesian Law and International Law”, Faculty of Law Universitas Muhammadiyah Yogyakarta, <<http://repository.umy.ac.id/bitstream/handle/123456789/16948/K.%20NASKAH%20PUBLIKASI.pdf?sequence=11&isAllowed=y>>, accessed December 10, 2021.

economic loss of 240 trillion IDR per year which she deemed more accurate.<sup>12</sup> Marine biotas are also threatened as 65% of the Indonesian coral reefs are threatened to be damaged by IUUF,<sup>13</sup> and the overexploitation has resulted in several marine biotas to grow at an abnormal rate.<sup>14</sup> Fishermen social welfare are also threatened, a clear example is the depletion of Anambas people's welfare. 90% of the Anambas people are fishermen, however their maritime potential was exploited due to the constant practice of IUUF within the Anambas and Natuna waters resulting in turmoil for the Anambas' people social welfare.<sup>15</sup> As of 2014, 30% of worldwide IUUF conducts took place in Indonesia.<sup>16</sup> Even until today, IUUF practices still remain a huge concern for the Indonesian government to tackle, the issue is even recognized under the Ministry of Marine and Fisheries Regulation No. 17/2020 regarding the Ministry of Marine and Fisheries 2020-2024 Strategic Plan.



---

<sup>12</sup> Ikaningtyas Nurdin and Rika Kurniaty. "The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters", IOP Conference Series: Earth and Environmental Science, 2018.

<sup>13</sup> Safrezi Fitra. "Jokowi: Indonesia Rugi Rp 260 Triliun Akibat Pencurian Ikan." <<https://katadata.co.id/safrezifitra/berita/5e9a56c17c3d4/jokowi-indonesia-rugi-rp-260-triliun-akibat-pencurian-ikan>>, accessed December 10, 2021.

<sup>14</sup> M Ambari. "Masih Terjadi, Ini Dampak Negatif Dari Praktik IUU Fishing.", <[www.mongabay.co.id/2020/03/12/masih-terjadi-ini-dampak-negatif-dari-praktik-iuu-fishing/](http://www.mongabay.co.id/2020/03/12/masih-terjadi-ini-dampak-negatif-dari-praktik-iuu-fishing/)>, accessed 10 December 2021.

<sup>15</sup> Ikaningtyas Nurdin and Rika Kurniaty. "The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters", IOP Conference Series: Earth and Environmental Science, 2018.

<sup>16</sup> Ella Syafputri. "Almost Half of Illegal Fishing in the World Occur in Indonesia", <<https://en.tempo.co/read/594269/almost-half-of-illegal-fishing-in-the-world-occur-in-indonesia>>, accessed 10 December 2021.

Acknowledging that two thirds of the trade traffics are conducted at sea, the sea serves as a sustainable income for world economy.<sup>17</sup> Due to that fact, IUUF practice is an internationally detested crime as it may disrupt international trade traffics, evident by several international organizations opening discourse to discuss the management of IUUF. Knowing to the fact that IUUF is an internationally practiced crime, Indonesia as a member of the FAO has taken international measures by agreeing on several international agreements promulgating international standards for proper fishing guidelines. The implementation of the Code of Conduct for Responsible Fisheries (CCRF) was agreed in 1995 by the FAO and the international action to combat IUUF outlined in the International Plan of Action to Prevent, Deter, and Eliminate IUUF (IPOAIUUF) was agreed since 2001.<sup>18</sup>

Regardless of the promulgation of proper fishing procedures within Indonesian waters, Indonesia still experienced the damage of overexploitation due to IUUF activities. IUUF modes throughout Indonesian waters varies, most frequently used are catching fish without permits, falsifying documents, transshipment at sea, disabling transmitter, destructive fishing using chemicals, biological concoctions,

---

<sup>17</sup> Anthony T Charles. Sustainable Fishery Systems, (Oxford: Blackwell Science, 2001).

<sup>18</sup> Ministry of Marine and Fisheries Regulation No. 50/MEN/2012 regarding the National Action Plan to Avoid and Manage Illegal, Unreported, and Unregulated Fishing Year 2012-2016; Ikaningtyas Nurdin and Rika Kurniaty. "The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters", IOP Conference Series: Earth and Environmental Science, 2018.

explosives, and/or other materials that endangers the sustainability of marine resources.<sup>19</sup>

Tired of IUUF threatening Indonesian sovereignty and undermining legal fishing procedures; Indonesia took a proactive stance against foreign fishing vessels conducting IUUF to ensure protection for Indonesia's natural resources. One of the sanctions for fishing vessels, including those of foreign flags, practicing IUUF is by sinking it. From 2014 to 2017, more than 300 illegal fishing vessels conducting IUUF within Indonesian waters has been sunk by Indonesian authorities.<sup>20</sup> This conduct has proven itself to be beneficial for Indonesia as it ensures the protection of sovereignty over Indonesian marine natural resources. The House of Representative ("DPR") has also claimed that the act of sinking foreign fishing vessels within Indonesian waters has succeeded to ensure foreign fishing vessels to tread lightly when deciding to fish in Indonesia.<sup>21</sup> Furthermore, this practice has been successfully socialized both nationally and internationally, especially to those who have threatened Indonesian maritime sovereignty.<sup>22</sup>

The authorization under Indonesian law for Indonesian law enforcers to sink foreign vessels is stipulated under Art. 69 verse (4) Law No. 45 Year 2009 regarding

---

<sup>19</sup> Dewi, R, and C Luhulima. *Problems of the Indonesian Sea Border Area in the South China Sea*. Lembaga Ilmu Pengetahuan Indonesia, 2008.

<sup>20</sup> *Ibid.*

<sup>21</sup> Sihombing, Lisbet. *Diplomasi Indonesia terhadap Kasus Penenggelaman Kapal Nelayan Asing*. 24th ed. Vol. VI. P3D. Jakarta: Dewan Perwakilan Rakyat, n.d.

<sup>22</sup> Ikaningtyas Nurdin and Rika Kurniaty. "The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters", IOP Conference Series: Earth and Environmental Science, 2018.

Amendment of Law No. 31 Year 2004 regarding Fisheries (“Law No. 45/2009”), which states,

“fisheries investigators and/or supervisors can take special actions in the form of burning and/or sinking fishing boats if presented with sufficient preliminary evidence.”

The law elaborates that the prerequisite for such an act to be done is to have “sufficient preliminary evidence”, which is defined as a preliminary evidence to suspect a criminal act that is conducted by fishing vessels with foreign flags. An example of sufficient preliminary evidence would be fishing without permit or blatantly fishing and/or transporting when entering Indonesian waters.<sup>23</sup> The need for sufficient preliminary evidence ensures that no sinking of foreign vessels is to be done arbitrarily.

Nevertheless, Law No. 45/2009 only serves as an umbrella law authorizing the Indonesian government to sink foreign vessels, law enforcers authorized to investigate IUUF within Indonesian waters are civil servant fisheries employees, investigator of the navy officers, and/or the Indonesian National Police Investigator.<sup>24</sup> Although stipulated which governmental institutions are authorized to enforce and investigate IUUF; it does not stipulate a specific governmental institutions designed to combat IUUF, nor the procedural steps to sink it. Due to the lack of a specific institution to coordinate the enforcement mechanism against illegal fishing in

---

<sup>23</sup> Point 29 of Elucidation of Law No. 45/2009.

<sup>24</sup> Art. 73 verse (1) of Law No. 45/2009.

Indonesia, Presidential Regulation No. 115 year 2015 regarding Illegal Fishing Eradication Task Force (“Presidential Regulation No. 115/2015”) established a special task force unit tasked to eradicate illegal fishing activities in Indonesia called Satgas 115. However, although the governmental institution to eradicate illegal fishing in Indonesia is already operational, both Law No. 45/2009 and Presidential Regulation No. 115/2015 still have not provided a proper procedural law in carrying maritime enforcements, including the sinking of foreign vessels conducting IUUF.

To nullify such a legal uncertainty, President Joko Widodo, through his cabinet’s ministry of marine and fisheries, enacted a specific regulation in regards to maritime enforcement, including sinking foreign vessels as one of the means to uphold Indonesian sovereignty over its waters, through Ministry of Marine and Fisheries Regulation No. 37 Year 2017 regarding the Standard Operational Procedure for Legal Enforcement of the Task Force to Eradicate Illegal Fishing (“Ministry of Marine and Fisheries Regulation No. 37/2017”). In conjunction with Presidential Regulation No. 115/2015, Ministry of Marine and Fisheries Regulation No. 37/2017 establishes the specific job description and procedural steps for Satgas 115 and other relevant law enforcers to eradicate IUUF in Indonesia, pursuant to Art. 1 verse (1) of said Ministerial Regulation. Hence, Ministry of Marine and Fisheries Regulation No. 37/2017 is enacted as a “*lex specialis*” law for both Law No. 45 2009 and Presidential Regulation No. 115/2015.

Although the procedural aspect of sinking foreign fishing vessels conducting IUUF has been established, the definition of IUUF under Indonesian law is stipulated under Art. 1 no. 13 of Ministry of Marine and Fisheries Regulation No. 39 year 2019 which states as follows:

“Fishing activities that are illegal, unreported, or reported incorrectly to the authorized fisheries management institution, and fishery activities that have not been regulated in laws and regulations and threaten the sustainability of fishery resources.”

The legal definition of IUUF is further specified under Art. 1 of Ministry of Marine and Fisheries Regulation No. 37/2017. Due to the broad nature of the definition of IUUF, the ministerial regulation elucidates the definition of illegal fishing and unreported fishing, and are defined as follows:

- Illegal Fishing (*Penangkapan Ikan Secara Ilegal*) are any fishery activities that are invalid or any fishery activities which are carried out contrary to the statutory provisions in the fisheries sector.
- Unreported Fishing (*Penangkapan Ikan yang Tidak Dilaporkan*) is the activity of not reporting the catch or reporting the catch that is not in accordance with the actual catch as regulated in the statutory provisions in the field of fisheries.

Furthermore, under Art. 1 point 2 of the same ministerial regulation pointed out that both unreported fishing and illegal fishing are categorized as a criminal act (*tindak pidana*) in the fishery sector. Although the definition of IUUF is very broad as it is an international term, the Author of this thesis uses the definition of both illegal and unreported fishing in accordance with the legally stipulated definition mentioned above.

Under Chapter III letter C No. 16 paragraph a of the State Gazette of Indonesia Year 2017 No. 949, which is an inseparable document from the Ministry of Marine and Fisheries Regulation No. 37/2017, it is stipulated that prior to the sinking of the foreign vessel, if an inspector deemed a vessel to have presented at least two sufficient evidence in conducting a criminal act, including IUUF,<sup>25</sup> the commander of the Satgas 115 ship shall be informed of the evidence which will then lead to the detainment of the alleged vessel to the port determined by the commander. After the detainment of the vessel to the port, the vessel will then serve as evidence to the court.<sup>26</sup> Under Art. 76A of Law No. 45/2009 *juncto*. Chapter IV letter Q No. 1 paragraph i verse (6) of the State Gazette of Indonesia Year 2017 No. 949, after the vessel serves as evidence it is only after a judge's verdict will the vessel, including that of foreign flag, be authorized to be burnt/ sunk.

Although the term “burnt” and “sunk” are distinct, the Author would use the term “sink” as a term which encapsulates both practice of sinking or burning ships interchangeably, as the conduct of either sinking or burning is a conduct which would nullify a ship's seaworthiness.

Chapter III Letter C No. 19b of the State Gazette of Indonesia Year 2017 No. 949 stipulates that Indonesia can sink a foreign vessel after:

---

<sup>25</sup> Art.1 Point 1 of Ministry of Marine and Fisheries Regulation No. 37/2017.

<sup>26</sup> Chapter III Letter C No. 20 of the State Gazette of Indonesia Year 2017 No. 949 regarding the Ministry of Marine and Fisheries Regulation No. 37/2017.

- 1) Saving as many crew of the fishing vessel as possible;
- 2) Making a complete and detailed inventory of all the equipment on the fishing vessel;
- 3) Proper visual documentation using a camera and/or audio recorder;
- 4) Separating the fishes caught from the burnt/ sunken boat for evidentiary purposes;
- 5) Making a report about the burning and/or sinking of fishing vessels to be included in the report on seamen by the relevant agency.

In certain circumstances however, the sinking of vessels may be done without the need to bring it to port. Chapter III Letter C No. 19a of the State Gazette of Indonesia Year 2017 No. 949, pointed out that there are two elements which are required to be met prior to sinking it, which are: (1) subjective terms, and/or (2) objective terms.

- (1) Subjective term is the term in which authorizes Indonesian law enforcers to sink foreign vessels immediately if the vessel conducts a dangerous maneuver and/or the crews of the vessel took violent acts of resistance.

(2) Objective term consists of (a) cumulative terms, and (b) alternative terms.

(a) Cumulative terms:

- I. Foreign flagged ship with all the crews being of foreign nationals;
- II. The illegal act was conducted within the Indonesian Fishery Management Area (*Wilayah Pengelolaan Perikanan Negara Republik Indonesia/ WPPNRI*);
- III. Does not have any documents from the government of Indonesia; and
- IV. Implemented with the principle of prudence and under the authorization of the commander.

(b) Alternative terms:

- I. Old ships are supported by letter facts and/or of no high economic value; and
- II. The ship is not possible to be taken to port, with the following considerations.
  - i) the ship is easily damaged or dangerous;

- ii) The towing fee for the vessel is too high; and
- iii) fishing vessel containing infectious disease or toxic and dangerous materials.

The proactive stance made by the Indonesian government resulted in glaring results. Evidently in 2016, after the sinking of 236 vessels, Indonesia experienced the increase of fish stocks, as mentioned by President Joko Widodo and the Ministry of Marine and Fisheries' 2020 annual report.<sup>27</sup> The Global Fishing Watch has also attested that the aggressive approach on tackling IUUF in Indonesia has succeeded to deter IUUF practices and increased Indonesian fish stocks.<sup>28</sup>

However, although the act of sinking foreign vessels conducting illegal and/or unreported fishing in Indonesia is regulated under Indonesian domestic law and has evidently protected Indonesia's national interest, it is not to be forgotten that Indonesia is also a party to the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), which has been ratified by Indonesia.<sup>29</sup> In this thesis, the Author would focus on the relationship of Indonesia's national law allowing the practice of sinking foreign vessels with international law specifically UNCLOS' legal regime.

---

<sup>27</sup> Safrezi Fitra. "Jokowi: Indonesia Rugi Rp 260 Triliun Akibat Pencurian Ikan", <<https://katadata.co.id/safrezifitra/berita/5e9a56c17c3d4/jokowi-indonesia-rugi-rp-260-triliun-akibat-pencurian-ikan>>, accessed 10 December 2021.

<sup>28</sup> Cutlip, Kimbra. *Joint Statement from the Republic of Indonesia and Global Fishing Watch, INC.* Global Fishing Watch, 2017. Accessed December 10, 2021. <https://globalfishingwatch.org/news-views/republic-of-indonesia-vms-joint-statement/>.

<sup>29</sup> Law No. 17 Year 1985 regarding the Ratification of the United Nations Convention on the Law of the Sea; State Gazette Year 1983 No. 76; Additional State Gazette of Indonesia No. 3319.

In international law, *Pacta Sunt Servanda* serves as a foundation,<sup>30</sup> conjunctively, under Art. 27 of the 1969 Vienna Conventions on the Law of Treaties (“VCLT”), it is clearly stated that

“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

Although Indonesia is not a party to the VCLT, Art. 27 of the VCLT provisions have attained international customary law status.<sup>31</sup> Thus, Indonesia may not justify their non-compliance against an international treaty, including UNCLOS and other international maritime laws, under the basis of Indonesian national law.

UNCLOS does not specifically govern in regards to IUUF, however, UNCLOS is still relevant when discussing IUUF due to its promulgation of enforcement at sea.

Under Art. 2 verse (1) *juncto*. Art. 21 verse (1) paragraph (d) and (e) of UNCLOS, the coastal state is granted full sovereignty within their territorial seas, which is a body of water that extends 12 nautical miles from the shore of the coastal state,<sup>32</sup> including the sovereignty to adopt laws and regulation to conserve and prevent infringement of the living and non-living resources at sea. Hence, Indonesia has every right within their territorial seas to conduct any means to ensure judicial

---

<sup>30</sup> Ian Brownlie. *Principles of Public International Law* 6th ed (Oxford University Press, 2003); Art. 26 Vienna Convention on the Law of Treaties 1969.

<sup>31</sup> Mark Villiger. *Commentary on the 1969 Vienna Convention on the Law of Treaties*, (BRILL, 2009), p. 374-375.

<sup>32</sup> Art. 3 of UNCLOS.

compliance to anyone, including towards those of foreign nationals. Thus; it is of no discussion within this thesis regarding the possible international liability Indonesia might bear due to the conduct of sinking foreign vessels within Indonesian territorial waters. The reason behind such a decision is due to the full sovereignty Indonesia has within their territorial waters.

However, the issue arises when foreign vessels are authorized to be sunk for their illegal conducts in the EEZ as the EEZ does not entail complete sovereignty of the coastal state. Under Indonesian domestic law, law enforcers are authorized to sink illegal foreign fishing vessels within Indonesian EEZ. The means of sinking illegal foreign fishing vessel can be done either through the Indonesian fishery court or sunk directly at sight if needed. Indonesia's practice of sinking illegal fishing vessels within the EEZ is stipulated under Art. 69 verse (1) *juncto* verse (4) of Law no. 45/2009, where the court may allow the sinking of foreign fishing vessels conducting IUUF within the Indonesian Fishery Management Area (*Wilayah Pengelolaan Perikanan Negara Republik Indonesia/ WPPNRI*). Under Chapter III letter C No. 19a verse (2) letter a paragraph ii of the State Gazette of Indonesia Year 2017 No. 949 *juncto*. Art. 1 Ministry of Marine and Fisheries Regulation No. 18 Year 2014 regarding Indonesian Fishery Management Area stipulates that vessels may be sunk prior to a court verdict, with the criteria as mentioned earlier above, if the act is done within WPPNRI. The legal scope of WPPNRI, based on Art. 5 of Law No. 31 Year

2004 regarding Fisheries (“Law No. 31/2004”) *juncto*. Art. 1 Ministry of Marine and Fisheries Regulation No. 18/2014, entails the Indonesian EEZ as part of WPPNRI.

Due to the uncertain international legality of Indonesia’s conduct of sinking foreign vessels conducting illegal and/or unreported fishing the within Indonesian EEZ, the Author of this thesis would limit the scope of the discussion by only discussing the international legality of Indonesia’s practice of sinking foreign fishing vessels conducting IUUF in the EEZ. The main focus of this thesis will be to provide a thorough analysis to a possible international liability from Indonesia’s practice of sinking foreign vessels in the EEZ to ensure protection of their sea’s natural resources.

Art. 56 verse (1) letter (b) paragraph (iii) of UNCLOS states Coastal States has jurisdiction provided under UNCLOS to protect and preserve the marine environment. However, under Art. 73 verse (2) of UNCLOS, it is stated that “Arrested vessels and their crews (from the EEZ) shall be promptly released upon the posting of reasonable bond or other security.” Such a textual definition would conclude that Indonesia’s enforcement through the means of sinking foreign vessels is incompatible with UNCLOS. However, it is insufficient to only interpret UNCLOS without exploring all aspects of it. The procedure for a vessel’s prompt release is further stipulated under Art. 292 verse (2) of UNCLOS which states;

“The application for release may be made only by or on behalf of the flag State of the vessel”

Furthermore, Art. 292 verse (1) of UNCLOS states that if countries have detained a fishing vessel but has not yet comply with the provisions set forth under UNCLOS, the question of release may be submitted to a competent court to demand its release. Hence, what is needed by Indonesia is the assurance that the practice of sinking foreign fishing vessels in the EEZ, which has evidently helped Indonesia to prosper, is in compliance with international law, to ensure the protection of Indonesian welfare without any possible judicial interference from foreign nations.

The Author of this thesis acknowledge that a prior thesis written by Thomas Pangaribuan has assessed the international legality of Indonesia's sinking vessel conduct. To ensure no inadvertent plagiarism is conducted by the Author and to also ensure full authenticity, the Author has decided to not read Mr. Pangaribuan's thesis, but would like to thank him for the assessment made of the matter.

## **1.2 Formulation of Issues**

Based upon the research background aforementioned above, this work will analyze the research issues as follows:

1. How does Indonesia regulate the practice of sinking foreign vessels conducting illegal and/or unreported fishing in Indonesian EEZ according to Indonesian domestic law and its corresponding beneficial impacts?

2. To what extent is the international liability arising from Indonesia's practice of sinking foreign vessels conducting IUUF in the Indonesian EEZ according to UNCLOS 1982?

### **1.3 Research Purposes**

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

1. To know whether or not the practice of sinking foreign vessels conducting illegal and/or unreported fishing in Indonesian EEZ by Indonesia is in accordance with international law provisions.
2. To assure the best possible defense for Indonesia's possible international liability arising due to the practice of sinking foreign vessels conducting illegal and/or unreported fishing in the Indonesian EEZ, as it is a nationally beneficial practice.

### **1.4 Research Benefits**

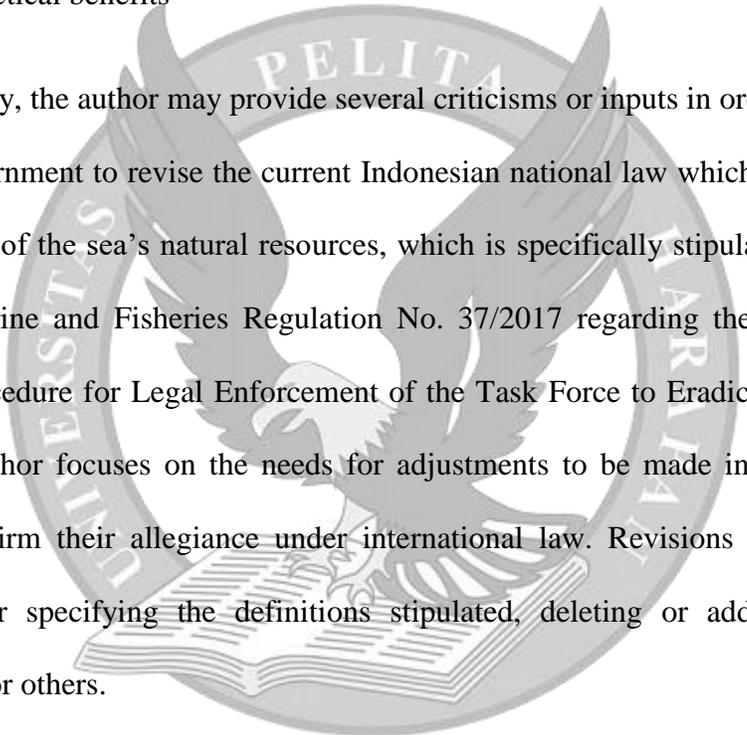
#### **1.4.1 Theoretical benefits**

Theoretically, the Author hopes that this thesis would help the reader to understand the textual and contextual approach regarding the applicability of Indonesian law, in this case Law no. 45/2009 *juncto*. Ministry of Marine and Fisheries Regulation No. 37/2017, with international maritime law, mostly under the

UNCLOS legal regime. The author would like to point out how Indonesia's law which justifies the practice of sinking foreign vessel is compatible with international law. The Author hopes that the thesis may provide a deeper understanding about Indonesian law especially in the field of maritime law and maritime enforcement.

#### 1.4.2 Practical benefits

Practically, the author may provide several criticisms or inputs in order for the Indonesian government to revise the current Indonesian national law which regulates the enforcement of the sea's natural resources, which is specifically stipulated under Ministry of Marine and Fisheries Regulation No. 37/2017 regarding the Standard Operational Procedure for Legal Enforcement of the Task Force to Eradicate Illegal Fishing. The author focuses on the needs for adjustments to be made in order for Indonesia to affirm their allegiance under international law. Revisions can be in forms of further specifying the definitions stipulated, deleting or adding some provisions, and/or others.



Additionally, if Indonesia is to be charged by foreign nations under the basis of international liability due to the practice of sinking foreign vessels, the Author would hope that this thesis can be of use as a means to justify/ defend the stances made by Indonesia to protect their national interests.

Lastly, this thesis would be beneficial for the law enforcers as it provides certainty and legal protection to justify the courageous task they pursue to defend

Indonesia's national resources. Hence, it would be of no need for the authority to be in confusion or dilemma in regards to whether or not their acts are internationally legal.

### **1.5 Framework of Writing**

The Author has arranged this thesis into five main chapters to ease the readers' understanding regarding the discussion of this thesis.

#### **CHAPTER I: INTRODUCTION**

This chapter is divided into five parts, which are background, research question, research purpose and research benefits.

#### **CHAPTER II: LITERATURE REVIEW**

In this chapter, the Author will divide it into two sub-chapters. First, the Author will be identify theoretical frameworks present within laws and regulations relevant to the title of this thesis. The Author elaborates theoretical framework of specific regulations stipulated under UNCLOS in regards to maritime enforcement in the EEZ. Furthermore, the Author will determine and elaborate the relevant Indonesian laws, regulations and policies that regulate Indonesia's procedure of sinking foreign vessels conducting IUUF in Indonesia. Second, the Author will elaborate conceptual frameworks by defining relevant concepts such as IUUF along with its conduct's consequences in Indonesia, and several other concepts.

### CHAPTER III: RESEARCH METHODS

This chapter discusses the Author's type of research method, the type of data, data analysis strategy and the approach the Author uses to research upon the issues discussed in this the thesis.

### CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the issues detected by the Author along with its solution. The Author divides this chapter into two further sub-chapters and each sub-chapter will answer the respective research question as mentioned in chapter two of this thesis. The first sub-chapter will consist of the analysis on how Indonesia regulates the practice of sinking foreign vessels conducting illegal fishing within the Indonesian EEZ. The second sub-chapter will analyze Whether or not Indonesia's regulation in regards to the practice of sinking foreign vessels is in accordance with international law provisions.

### CHAPTER V: CLOSING

In the last chapter, the Author will elucidate the conclusion as an answer to the issues analyzed in chapter four. The Author will also give suggestions and recommendations within this chapter towards the issues raised and the probable domestic regulatory adjustment that can be made to ensure certainty and/or compliance towards

international law whilst also ensuring beneficial outcomes from the practices authorized by domestic law.

